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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54-63.58	)	CC Docket No. 87-266
	)	
and	)	
	)	
Amendments of Parts 32, 36, 61, 64, and 69 of the Commission's Rules to Establish and Implement Regulatory Procedures for Video Dialtone Service	)	RM-8221

Reply of Bell Atlantic
Concerning Third Further Notice of Proposed Rulemaking

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A. Introduction and Summary

In comments filed in response to the Commission's Third Further Notice of Proposed Rulemaking, the cable industry once again tries to raise additional barriers to video dialtone deployment and encourages the Commission to impose requirements that will deny video dialtone providers the flexibility they need to offer effective competition to cable. The Commission should reject these efforts, move expeditiously to conclude this proceeding, process all remaining Section 214 applications, and

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[1] The Bell Atlantic Telephone Companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc., Bell Atlantic-Maryland, Inc., Bell Atlantic-New Jersey, Inc., Bell Atlantic-Pennsylvania, Inc., Bell Atlantic-Virginia, Inc., Bell Atlantic-Washington, D.C., Inc., and Bell Atlantic-West Virginia, Inc.

permit telephone companies to begin bringing consumers the benefits of choice and competition in video services.

In order to provide telephone companies sufficient flexibility to compete in an era of rapidly changing technologies and market conditions, the Commission should continue to decline to specify any particular architecture or technology for video dialtone systems. In addition, the Commission should expressly permit telephone companies to provide a limited amount of analog capacity on their networks as a necessary transitional mechanism if, in their view, market forces so require. The Commission should also amend the video dialtone rules to expressly permit local over-the-air broadcasters and PEG programmers to obtain transport over Bell Atlantic's video dialtone networks under its "will carry" proposal, and authorize other shared channel arrangements for use of limited analog capacity that do not require network interdiction.

The Commission should not impose on the Section 214 approval process unnecessary and burdensome procedures and requirements concerning pole and conduit access. Finally, the Commission should permit acquisition of cable facilities in areas with populations up to 50,000, and in cases where the cable operator is experiencing severe economic distress.

B. The Commission Should Allow Market Forces to Determine Video Dialtone Architectures and Technologies

The comments filed in this proceeding leave no doubt that digital video transmission technology is the future of the

video delivery industry, and that the technology and equipment to support digital service are currently, or soon will be, available on a commercial basis.[2] Over time, market forces will prompt migration to digital technology,[3] because such technology permits substantial expansion of channel capacity and programming choices through digital compression techniques,[4] provides picture quality that meets or exceeds existing analog signal quality,[5] and permits introduction of sophisticated interactive services.[6]

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[2] See, e.g., Compression Labs at 4-8; Broadband Technologies at 4-9; GTE at 6-8; US West at 10; Bell Atlantic at 4-6. At least one manufacturer has announced its intent to begin producing television sets that accept digital input. Broadband Technologies at 7-8.

[3] The Consumer Electronics Group of the Electronic Industries Association (CEG/EIA) has requested that the Commission harmonize its rules governing video dialtone service with those requiring compatibility between cable systems and consumer electronic equipment, particularly those concerning the Decoder Interface. CEG/EIA at 4-5. The Decoder Interface, which eliminates the need for a set top decoder for analog transmissions, has no application to networks, like those proposed by Bell Atlantic, that are all-digital or deliver analog signals without interdiction or encryption.

CEG/EIA and Compaq Computer Corporation also ask that video dialtone systems be required to be capable of physically separating security and non-security functions in order to permit non-security functions to be performed by competitively supplied equipment, i.e. television sets or VCRs. Id.; Compaq Computer Corporation at 4-5. While security and non-security functions may be separable in a digital network, non-security functions may well be provided by highly sophisticated set top boxes, not by television sets or VCRs. A proprietary security function could also reside in the set top box under license.

[4] See, e.g., Compression Labs at 5; GTE at 708; Nynex at 5-6; US West at 10.

[5] See, e.g., Compression Labs at 6; Bell Atlantic at 5, n.9.

[6] See, e.g., US West at 10; Bell Atlantic at 6.

There are, however, certain additional start-up costs for programmers in switching to digital technologies, including the cost of digital encoding equipment and servers.[7] Moreover, television and videocassette recorders in use today cannot receive digital signals without use of a set top decoder, which vendors estimate will cost approximately $250-$350 by 1997.[8]

The Commission should resist the self-serving entreaties of the cable industry[9] and certain equipment manufacturers[10] to mandate either infinitely expandable analog capacity or all-digital systems. With regard to analog expansion, the Commission's vision of a robust video dialtone service capable of providing effective competition to cable from multiple video information providers is unlikely to be realized if telephone companies must deploy primarily analog systems. State-of-the-art 750 MHz video delivery systems are capable of providing a maximum of 110 analog channels, if no digital channels are provided.[11] Substantial use of the spectrum for analog delivery would significantly diminish the amount available for digital service, severely limiting the system's overall

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[7] See, e.g., Nynex at 6-7; Southwestern Bell at 4; US West at 10.

[8] Compression Labs at 7.

[9] NCTA at 12-13; Adelphia Joint Parties at 3-4.

[10] Ortel Corp. at 4-7; BroadBand Technologies at 25-32.

[11] Moreover, there are technical limits to the expandability of analog technology, as the Commission itself acknowledges. Third NPRM at ¶ 268.

capacity and greatly reducing the opportunity for introduction of innovative, interactive services. In fact, video dialtone networks forced to provide the maximum possible analog capacity would look much like existing cable services, delivering exclusively one-way, point-to-multipoint broadcast programming from a limited number of programmers. Although the cable incumbent would no doubt relish the prospect of forcing telephone companies to try to break into their markets with limited capacity and without robust and innovative services to offer, requiring telephone companies to deploy "profoundly antiquated" networks[12] would severely limit the benefits to consumers, and undermine prospects for effective competition to cable service and for development of more diverse programming and innovative services.

On the other hand, many commenters underscored the costs and risks of mandating all-digital networks. Such networks do not provide consumers the option of accessing local broadcast programming without a set top decoder, and due to start-up or transition costs, may limit early participation by local broadcasters and others whose signals are likely to be delivered in analog form for the immediate future. Furthermore, with much of the equipment and software embodying these technologies in

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[12] See PEG Access Coalition at 4 (digital capability to offer significantly more programming and interactive services using technologically sophisticated hardware "will make the current generation of one-way point-multipoint multichannel distribution systems via coaxial cable seem profoundly antiquated.")

early production, with costs expected to decline over time, some programmers may prefer not to make the investment required to begin digital signal delivery today.

In this early stage of the industry, with rapid technological change occurring and little real world data yet available, it would be imprudent for the Commission to begin dictating use of particular technologies or architectures for video dialtone networks. The Commission can best encourage technological innovation and maximize the chances for viable competition to cable by permitting local exchange carriers to experiment with different architectures (switched digital, hybrid fiber-coaxial cable, asymmetric digital subscriber line) and technologies (analog, digital, or some combination), and to deploy those systems they judge best suited to the demands of their local marketplace.

Moreover, the Commission should take appropriate measures to ensure that its Section 214 authorizations for construction of video dialtone networks provide flexibility for telephone companies to deploy new or different technologies to provide similar or greater capabilities, without requiring a Section 214 amendment or further regulatory proceedings. Given the speed of technological and market changes,[13] optimal network

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[13] For example, the MPEG-1 standard has recently been replaced by MPEG-2. See, e.g., US West Communications, Inc., Application, W-P-C 7024 (filed Nov. 6, 1994) at 5-7 (amendment to replace hybrid fiber-coax architecture with switched digital video).

choices may be quickly superseded even if Section 214 applications were processed in a matter of months.

C. The Commission Should Authorize, But Not Mandate, Preferential Access Arrangements, Such as Bell Atlantic's "Will Carry" Proposal

Preferential access for local programmers entitled to carriage under Bell Atlantic's "will carry" proposal is supported by many consumers, programmers, and local authorities as an important means of ensuring the continued availability of local community programming.[14] Objections to "will carry," however, appear either to reflect a fundamental misunderstanding of how the proposal will work[15] or are otherwise without merit.

1. There are No Statutory or Constitutional Bars to Bell Atlantic's Will Carry Proposal.

Contrary to the assertions of the cable industry, will carry is not inconsistent with Bell Atlantic's common carrier obligations under Title II,[16] and does not give Bell Atlantic

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[14] NAB at 8; Association of America's Public Television Stations at 12-17; PEG Access Coalition at 2-16.

[15] Under will carry, PEG channels will not be required to share time with commercial programmers. See PEG Access Coalition at 17. Each of the four PEG channels will be dedicated to PEG programming, as authorized by local authorities. In addition, all will carry channels will be easily accessible by subscribers purchasing video services that require a set top box. See Center for Media Access at 18.

[16] While Bell Atlantic recognizes that preferential access arrangements, such as "will carry" are not currently authorized under the video dialtone rules, see Video Dialtone Reconsideration Order at ¶ 254, Bell Atlantic explicitly asked the Commission to change the rules, on reconsideration, to permit it. Letter to William Caton, Acting Secretary, Federal Communications Commission, from Marie Breslin, Bell Atlantic

exclusive control, like a cable operator, over both conduit and content, giving rise to Title VI obligations.[17] As an initial matter, cable is incorrect in asserting that Bell Atlantic is unilaterally determining that preferential access is in the public interest,[18] and will be impermissibly involved in "selecting" the programming that will appear on the will carry channels.[19] To the contrary, Bell Atlantic is seeking permission to allow a unique class of customers to avail themselves of a specific service offering, without charge to that class, to support what Congress and the Commission have concluded is a substantial Federal interest in ensuring the continued universal availability of local, over-the-air broadcasting and PEG programming.[20] Bell Atlantic's will carry proposal also will further the goals of the 1992 Cable Act concerning delivery of certain local video programming in the clear, without the need for a set top decoder. If the Commission approves Bell Atlantic's proposal and tariff, Bell Atlantic will have no discretion in determining which programmers' signals to carry;

(Oct. 3, 1994).

[17] NCTA at 20-21; Center for Media Education at 18.

[18] See Adelphia Joint Parties at 9; see also Center for Media Education at 18.

[19] See Association fo America's Public Television Stations at 6-8.

[20] See Bell Atlantic, Exhibit A at 1-2.

programmers who qualify for carriage under the tariff will choose whether or not to become programmers on the network.

By advancing this proposal, Bell Atlantic has not become involved in "selecting" programming at the outset, just as it will not become involved in "pricing" programming to subscribers when it submits its proposed tariff rates -- rates that may also be reflected in programmers' charges to their subscribers. In each case, Bell Atlantic is simply offering appropriate classifications and rates for the regulated services it intends to offer, subject to the Commission's review and approval. It is for the Commission to determine (i) whether those substantial Federal interests and public policy goals should be supported in the video dialtone context, (ii) whether Bell Atlantic's proposal reasonably and lawfully furthers those goals, (iii) whether the proposed tariff classification is a reasonable one, and (iv) whether the video dialtone rules should be amended to permit will carry.

Bell Atlantic's will carry proposal also does not discriminate against non-broadcast programmers in violation of Sections 201 and 202(a) of the Communications Act of 1934.[21] Under Section 201, the Commission may permit "just and reasonable" tariff classifications. Bell Atlantic proposes to offer analog service to a unique class of customers -- local broadcasters and PEG programmers -- that Congress has concluded deserve special treatment. Although some commenters note that

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[21] Adelphia Joint Parties at 9.

programmers could obtain access to the video dialtone platform by purchasing digital service,[22] that would be of little assistance to many of these local programmers, who expect to continue to deliver their signal in analog form during some interim period. Bell Atlantic is therefore willing to accommodate these programmers, for public policy reasons, subject to the Commission approval, during the transition period by making a limited amount of analog capacity available for their use.

Nor would free carriage for this unique class of programmers violate Section 202(a), which prohibits unjust or unreasonable discrimination with respect to "like" services. As the cable industry itself admits,[23] the digital service Bell Atlantic offers other programmers is not "like" the analog service it offers will carry programmers because the two services are not functionally equivalent.[24] A finding that the two services in question are not "like" marks the end of the Section 202 inquiry. Even if they were like services, however, Bell Atlantic's proposed preferential rates are just and reasonable as a necessary transition mechanism to ensure the continued universal availability of local over-the-air broadcast stations

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[23] NCTA at 10.

[24] See Bell Atlantic, Exhibit A, at 4-5.

and other local programmers as they make the transition to digital technology.[25]

Finally, cable's argument that will carry violates the First Amendment rights of other video programmers is also without foundation.[26] Such a voluntary undertaking by a private party, even if subject to the Commission's approval, does not constittute state action or otherwise involve the Government in mandating speech.[27] Bell Atlantic's voluntary will carry proposal therefore does not present the constitutional issues raised by governmentally mandated carriage schemes such as the "must carry" rules for cable.

2. Eligibility for Preferential Access on Video Dialtone Systems Should be Limited to Those Entities That are Eligible For Must Carry Status on Cable Systems.

Several commenters ask the Commission to expand the pool of programmers eligible for will carry or other preferential access arrangements to include a much wider array of entities, such as all public telecommunications entities,[28] all existing

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[25] See Investigation of Special Access Tariffs, 8 FCC Rcd 1059, 1079 (1993) (authorizing discriminatory rate structure for 8 years as a transition mechanism due to unique circumstances arising from divestiture).

[26] Atlantic Cable Coaltion at 25-26.

[27] See Jackson v. Metropolitan Edison Co., 419 U.S. 345 (1974) (action taken by a public utility under an approved tariff does not constitute state action).

[28] Association of America's Public Television Stations at 25.

PEG channels,[29] non-profit organizations entitled to 501(c)(3) status under the Internal Revenue Code,[30] or any member of the public that would like to send video programming to other members of the public through use of an electronic "video soapbox."[31]

Substantially broadening the definition of eligible entities as these commenters suggest undercuts the rationale for permitting will carry or preferential access for a unique, narrowly defined class of programmers that Congress has already found deserve special treatment by cable -- the "must carry" programmers.[32] Although not subject to local franchise

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[29] City and County of Denver at 3-5.

[30] See Center for Media Education at 15 (affording preferential access to 501(c)(3) organizations formed exclusively for the purpose of offering free noncommercial information to the public).

[31] NATOA at 9.

[32] The National Association of Broadcasters urges the Commission to impose on video dialtone systems requirements similar to those applicable to broadcast carriage on cable systems under the must carry rules. NAB at 4. Such requirements include the opportunity for a local broadcaster to choose between guaranteed carriage or retransmission consent for value, protection of channel positioning or guaranteed access from an initial menu, protection of signal integrity, carriage of signals in their entirety, and syndicated exclusivity and network non-duplication protection.

Bell Atlantic would have no difficulty complying with signal integrity and carriage of the entire signal requirements. In addition, Bell Atlantic has already agreed to carry VHF stations qualifying for will carry in their original channel positions, and would only move qualifying UHF stations if their original channel position falls outside the analog channel range. Moreover, all will carry channels will be accessible to subscribers as soon as they turn on their television sets.

Bell Atlantic would not object to a retransmission consent requirement, provided that some mechanism could be devised to permit the network to recoup its costs in complying. Although

requirements, Bell Atlantic recognizes, as did Congress, the public interest benefits of providing access to its systems for a limited number of public, educational and governmental ("PEG") channels. For that reason, Bell Atlantic's will carry proposal also includes an option for each municipality to specify up to four PEG channels for carriage on the video dialtone network.[33]

Bell Atlantic estimates that accommodating the programmers that would qualify for "must carry" treatment under the cable rules, plus four PEG channels, will require approximately 15-30 analog channels. Mandating that video dialtone networks accommodate far more entities at preferential rates would unfairly impose greater burdens on video dialtone providers than on competing cable operators. Moreover, such a requirement would increase the costs of video dialtone services, creating an additional competitive disadvantage. In addition, if many of those additional programmers require analog capacity in the initial years, such demands would sharply diminish the overall channel capacity available to all programmers, and

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the network could not itself comply with network nonduplication and syndicated exclusivity rules without impermissibly "editing" the programmer's signal, the Commission could require that programmers deliver signals to the network that comply with such rules.

[33] Muncipal authorities also request that video dialtone providers be required to provide studios, facilities and equipment to support PEG access. Such facilities would, in many instances, duplicate existing cable-provided PEG facilities. Moreover, the Commission would lack constitutional or statutory authority to mandate that telephone companies provide financial support for municipal facilities.

restrict the availablity of digital capacity for new interactive and transactional service offerings.

Although one commenter proposed options for selecting among potential access users, that winnowing would not occur until demand for preferential public access exceeded network capacity.[34]

In contrast, cable's must carry requirements are subject to finite numerical limits. Furthermore, excessive requirements for free or reduced carriage on video dialtone systems would raise constitutional "takings" concerns.

D. The Commission Should Approve Channel Sharing Proposals That Do Not Require Interdiction.

Bell Atlantic urges the Commission to authorize channel sharing arrangements that permit the video dialtone platform provider to choose a third party to act as administrator, and allow that administrator to recoup its costs through the network's tariffed charges to programmer-customers.[35] Such arrangements permit maximum effective use of limited analog capacity without requiring costly channel blocking capabilities.

Recognizing that many of the current channel sharing proposals before the Commission would enable video dialtone providers to offer an economically viable, marketable product that could provide true effective competition to cable, the cable

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[34] See Center for Media Education at 16.

[35] See Bell Atlantic at 11-13.

industry, unsurprisingly, argues that such arrangements violate the common carrier requirement of the video dialtone rules.[36] Cable argues that any involvement of the telephone company, no matter how indirect, in selecting a third party to act as administrator of the shared channels or in facilitating efforts by programmer-customers themselves to determine channel sharing arrangements constitutes impermissible involvement by the video dialtone provider in selecting, packaging, pricing, or tiering of programming. In fact, cable even goes so far as to argue that such peripheral involvement could make the administrator or the telephone company a cable operator offering cable service under Title VI.[37] Cable's arguments are without merit.

The selection of a third party is explicitly intended to get the telephone company out of any possible decision-making role concerning the content to be provided over the shared channels. In fact, the Commission has already determined that selection by the carrier of a third party administrator is consistent with its video dialtone requirements, because that action "sufficiently isolated [the telephone company] from video programmer functions."[38] So long as that third party acts independently in making its decisions concerning program

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[36] See, e.g., NCTA at 16-17; Atlantic Cable Coalition at 15-17.

[37] See, e.g., NCTA at 18; Atlantic Cable Coalition at 11-13.

[38] US West Communications, Inc., Order and Authorization (rel. Jan. 6, 1995) at ¶ 19.

selection, pricing, packaging and other terms, and purchases transport service from the network under tariffed terms and conditions, that third party administrator cannot credibly be said to be operating or maintaining the video dialtone network.

Cable suggests that the Commission grant authority only to market-based spontaneous channel sharing arrangements by programmers who voluntarily arrange to share programming on whatever terms they negotiate, and then bring their proposed arrangement to the network provider to implement. Such arrangements may only be economically viable if the video dialtone network provides costly channel blocking capabilities.[39] Such capabilities add substantially to the cost of the network,[40] driving up costs and prices to programmers and consumers.

E. Additional Pole Attachment Proceedings and Requirements Will Only Serve to Further Delay Deployment of Video Dialtone Systems

In a transparent attempt to find yet another way to delay the advent of competition, the cable industry has filed a

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[39] Without interdiction, the shared channels would be available to all programmers' customers, whether or not that programmer participated in the channel sharing arrangement, generating a "free rider" problem. Those programmers participating in the shared channel arrangement could not withhold the programming from customers of non-paying programmers without terminating delivery of the programming to their own customers as well.

[40] See Bell Atlantic at 12 (adding channel blocking capability to the network would cost at least $150 per subscriber).

separate 40-page brief aimed at stopping video dialtone deployment dead in its tracks in any state if any cable operator anywhere in the state is having a dispute with the telephone company concerning pole and conduit access, and perhaps other, issues.[41] The cable operators admit that extending the channel service certification requirement to video dialtone applications would be an empty formality, because the telephone companies "only would be certifying to compliance with laws to which they already were obligated to comply."[42] Yet they ask the Commission to build around their existing, enforceable legal rights a protracted and burdensome additional regulatoryprocess whose sole aim is to stop video dialtone competition.Under their proposal, no video dialtone application or tariff could be approved until all actions by telephone companies to which the cable companies object were eliminated.[43] The Commission should firmly reject

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[41] See Pole Attachment Comments of Continental Cablevision at ii-iii, 32.

[42] Id. at 24.

[43] Under cable's proposal, telephone companies would be required to serve all cable operators in the state of proposed video dialtone service with copies of their Section 214 applications and amendments, proposed tariffs and amendments, and proposed pole or conduit rate increases -- even those outside the proposed video dialtone service area. All cable operators would then have the opportunity to raise any allegation of anticompetitive conduct by the telephone company for review by the Commission. In fact, telephone companies would be broadly prohibited from "engag[ing] in any...practice which...has the effect of impeding or delaying in any way a cable operator's deployment of...any...facilities or services..." Such language would arguably bar the telephone company from participating in certain judicial or administrative proceedings, contractual disputes, or other legitimate business activities. See id., Attachment 1, A(1)(b).

this latest cable tactic as unnecessary, inappropriate and overreaching.

Although cable recites page after page of ancient pole and conduit access history rendered irrelevant by the Pole Attachment Act and lengthy, one-sided allegations of particular access disputes,[44] their barrage of invective does not alter the fact that cable operators already have adequate Federal and State administrative remedies to obtain pole and conduit access at reasonable rates,[45] to the extent technologically feasible.

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[44] Many of cable's complaints involve access disputes with electric utilities rather than telephone companies, and are irrelevant to this proceeding.

With regard to the specific allegations involving Bell Atlantic-New Jersey, Inc. (BA-NJ), Pole Attachment Comments of Continental Cablevision at 24, it is BA-NJ's clear and unequivocal corporate policy and practice not to relocate cable wire without the cable operator's consent, absent emergency circumstances. It is also BA-NJ's standard practice not to use Illinois brackets or extension arms to attach additional cables to a pole, for its own use or for use by others, because such brackets or arms make maintenance of and access to the company's wires much more difficult. Finally, as a general policy, BA-NJ restricts "boxing" (i.e., wiring both sides of a pole) by itself and others because boxing makes maintenance and later pole replacement more difficult.

The Commission should also be aware that in recent years, BA-NJ has repeatedly identified serious violations by local New Jersey cable operators, including Suburban Cablevision, of the National Electrical Safety Code and BA-NJ's pole licensing agreement, and has requested that corrective action be taken.

[45] In the case of Suburban Cablevision's dispute with BA-NJ, the adequacy of existing remedies is demonstrated by the cable companies' admission that a hearing on Suburban Cablevision's complaint is currently pending before state regulators. Additional protection is provided by the New Jersey State Bureau of Public Utilities' formal review and approval of the pole license agreement under which Suburban Cablevision and all cable operators in New Jersey obtain pole access from BA-NJ, and of BA-NJ's manual of construction guidelines concerning pole attachments and conduit

Moreover, mandatory Federal regulatory proceedings relating to pole or conduit access would contravene the Pole Attachment Act's authorization for the Commission to regulate rates, terms and conditions for such access only where state regulatory authorities choose not to do so.[46]

Finally, there is no need for additional cost apportionment rules relating to pole and conduit use.[47] Under the Commission's tariffing rules, a telephone company's charges for video dialtone service must cover its direct costs to provide the service, as well as some reasonable portion of shared and common costs.[48] Such costs include a proportionate share of the pole and conduit facilities used to add video dialtone capability.[49]

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access.

[46] See 47 U.S.C. § 224(c)(1) (withholding jurisdiction from the Commission under the Pole Attachment Act "in any case where such matters are regulated by a State").

[47] See NCTA at 34.

[48] VDT Reconsideration Order at ¶ 213-14.

[49] Contrary to NCTA's assertion, cable does not pay a "proportionate" share of the costs of the poles and conduits they use. If each of the cable, telephone company and electric company share use of a pole and each has one attachment, a "proportionate" division would split the cost of the pole in thirds. Under the rate formula in New Jersey, if a pole has 13 feet of usable space on a pole, and a cable attachment uses one foot, the cable operator pays 1/13 of the annualized cost of the pole. If the telephone company and electric company jointly own the pole and each also has an attachment, they must absorb between them the cost of the rest of the pole, or 6/13 of the cost each. Such pole costs for the telephone company must be further allocated across all of the regulated services it provides. That allocated amount, not the amount the cable

F. The Commission Should Permit Acquisition of Cable Facilities in Communities with Populations Up to 50,000 and in Cases of Clear Economic Distress

Bell Atlantic supports proposals to permit telephone companies to acquire the facilities of an existing cable operator, and to permit joint telephone-cable construction of facilities, in communities with populations up to 50,000.[50] The economic characteristics of markets that size indicate that competition between two wireline providers is unlikely to be viable[51].

Bell Atlantic also supports those who urge the Commission to permit telephone company acquisition of cable facilities on a case-by-case basis, pursuant to waiver, where the cable incumbent is in acute economic distress, e.g., on the verge of bankruptcy,[52] or in any other circumstances in which the cable incumbent is able to demonstrate that it could not continue to compete with a second wireline provider.[53] Acquisition of a failing operator's facilities by a stronger competitor may permit

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operator pays, is the appropriate amount for determining the cost of providing video dialtone service.

[50] See GTE at 15. Proposed Federal telecommunications legislation last year would have raised the rural exemption to 50,000. See S.1822 § 501.

[51] See Economists International analysis attached to NCTA comments.

[52] Center for Media Education at 4-7.

[53] NCTA at 29-32.

the acquiror to upgrade the facilities and service to the benefit of local consumers.

Finally, the Commission has already determined that, so long as the telephone company provides common carrier video dialtone service rather than cable service, over those existing or upgraded facilities, no cable franchise is required.[54]

Conclusion

The Commission should modify its video dialtone rules as discussed above and in Bell Atlantic's earlier comments filed in this proceeding.

Respectfully submitted,

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[54] NCTA v. FCC, 3 F.3d 66, 74 (D.C. Cir. 1994).

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Reply of Bell Atlantic Concerning Third Further Notice of Proposed Rulemaking" was served this 17th day of January, 1995 by first class mail, postage prepaid, on the parties on the attached list.

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